

Colorado Dept of Health  
Hazardous Materials and Waste Management Division

Comments to Proposed  
OU-4 Phase I IM/IRA

Issue Identification and Resolution Process

October 13, 1993

Informal FAX transmittal to Randy Ogg, EG&G

(Discussed in relative order of importance:)

The Division, based on prior experience, is concerned that an IAG-equivalent dispute resolution process will not support the schedule for creation of the Phase I IM/IRA. Consequently, the process needs to be avoided to the fullest extent possible and streamlined for quick response when its use is unavoidable.

If a CDH/EPA position is supported by law, regulation or previously defined policy, DOE generally should not use dispute resolution in an attempt to alter a CDH/EPA position. The playing field should be equal for all facilities within the State. For example, CAMU is not supported by regulation nor is this expected within the time-frame for selection of a closure action; therefore, disputing the appropriateness of CAMU may be considered as a lack of "good faith" by DOE.

However, we do not take the position that the working group would be precluded from determining the appropriateness of a modified RCRA cap, for example, if the Division determines in advance that regulatory requirements may potentially be met by the alternative.

In short, let us discuss and resolve informally what is regulatorily feasible and avoid disputing those that are not regulatorily feasible.

Too the extent that this cannot be achieved, we propose a modified IAG approach to dispute resolution. First, the IAG has a three-tierd dispute process that begins with Gary Baughman, Martin Hestmark and Rich Schassburger (the Project Coordinators). We agree that the "OU-4" coordinators will have been **unsuccessful** if dispute must be invoked; therefore, the IAG Project Coordinators for CDH and EPA should be "consulted" informally prior to the next scheduled meeting to determine if the issue is "disputable". If the issue is "disputable", the IAG project coordinators should be given an absolute maximum of 15 working days (no extensions) to resolve the issue. If the dispute cannot be resolved in the allotted time, the dispute should be elevated to the DRC. The DRC should have the ultimate call. Since CDH is the lead, if the DRC does not achieve consensus agreement, then the position of CDH's

representative to the DRC should be final. (Under the IAG, CDH's Assistant Director in the Office of Environment has the ultimate call, subject to court review. To our knowledge no dispute has reached this level and should be discouraged if disputes are to be resolved quickly.)

The Division has concern about the use of the sub-committee approach since it would appear that the CDH and EPA group member would need to sit on any or all sub-committees. It seems acceptable to the Division to forgo subcommittees and have each party discuss the issue with their respect IAG Project Coordinators. If the issue is determined by the CDH and EPA (IAG) coordinators to be disputable then the respective OU-4 coordinators should draft a written statement of dispute for consideration and resolution as defined above.

Regarding the use of a "majority favorable vote" (page 1), the Division believes anything short of consensus constitutes a potential dispute when used for issue resolution (particularly if the Division, as the lead, is not in concurrence). We can support a majority vote for issue identification in that DOE and EG&G may have additional insight into the importance of an issue.